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November 21, 2017

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency 1200
Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

**RE: Freedom of Information Act Request for Records Related to Reporting Required by
40 C.F.R. Part 60 Subpart OOOOa**

Dear National Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended, and its implementing regulations, the Attorney Generals of California, Iowa, the Commonwealth of Massachusetts, Oregon, Vermont, and the District of Columbia, the State of Colorado, and the Corporation Counsel of the City of Chicago ("States") hereby make this request for records. This request describes: (1) the records sought; and (2) our request for a fee waiver for production of these records.

Request for Materials

The States believe that EPA is in possession of records, as that term is described at 5 U.S.C. § 552(f)(2), related to reporting made pursuant to 40 C.F.R. Part 60 Subpart OOOOa ("Subpart OOOOa"). These records include, but are not limited to, communications, documents, letters, information, notes, memoranda, electronic mail transmissions or other electronic forms of information, telephone logs and records, meeting records, reports, analyses, assessments, data, and modeling, including all drafts and preliminary forms of any such records.

Specifically, the States request the following records:

1. Reports submitted to EPA pursuant to Subpart OOOOa's reporting requirements including, but not limited to, the following reports:

(a) Results of the Performance Test, as required by 40 C.F.R. § 60.5420a(b)(9)(i);

(b) Initial Semiannual Reports, as required by 40 C.F.R. § 60.5422a(b);

- (c) Semiannual Reports, as required by 40 C.F.R. § 60.5422a(a);
- (d) Annual Reports, as required by 40 C.F.R. § 60.5420a(b); and
- (e) Annual Reports of Excess Emissions for Sweetening Units, as required by 40 C.F.R. § 60.5423a(b).

2. Copies of all correspondence between EPA and outside parties containing:

(a) reference to the new source performance standards for the oil and gas sector, Subpart OOOOa, or any of the specific reports or regulatory provisions listed above in paragraph (1) of this request; and

(b) one or more of the following terms:

- (i) “comply,” including any inflection thereof (e.g., “complies,” “complying,” “compliant,” or “compliance”);
- (ii) “deadline” or “deadlines”;
- (iii) “delay,” including any inflection thereof (e.g., “delays,” “delayed,” or “delaying”);
- (iv) “due”;
- (v) “enforce,” including any inflection thereof (e.g., “enforces,” “enforcing,” or “enforcement”);
- (vi) “extend,” including any inflection thereof (e.g., “extends,” “extending,” “extension,” or “extensions”);
- (vii) “postpone,” including any inflection thereof (e.g., “postpones,” “postponed,” “postponing,” or “postponement”); or
- (viii) “variance” or “variances.”

3. Copies of all internal correspondence within EPA containing:

(a) reference to the new source performance standards for the oil and gas sector, Subpart OOOOa, or any of the specific reports or regulatory provisions listed above in paragraph (1) of this request; and

(b) one or more of the following terms:

- (i) “comply,” including any inflection thereof (e.g., “complies,” “complying,” “compliant,” or “compliance”);

- (ii) "deadline" or "deadlines";
- (iii) "delay," including any inflection thereof (e.g., "delays," "delayed," or "delaying");
- (iv) "due";
- (v) "enforce," including any inflection thereof (e.g., "enforces," "enforcing," or "enforcement");
- (vi) "extend," including any inflection thereof (e.g., "extends," "extending," "extension," or "extensions");
- (vii) "postpone," including any inflection thereof (e.g., "postpones," "postponed," "postponing," or "postponement"); or
- (viii) "variance" or "variances."

Please provide all of the requested records on a rolling basis. If any of the information sought in this request is deemed by EPA to be exempt from production pursuant to one or more exemptions set forth at 5 U.S.C. § 552(b), then please provide an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Fee Waiver

The States are, of course, noncommercial organizations not subject to review fees. In addition, the States respectfully request a waiver of search and copying fees. Under FOIA, agencies must waive such fees where disclosure is likely to contribute to public understanding of the operations and activities of the government and disclosure is not primarily in the commercial interest of the requester. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). EPA has incorporated this requirement in its regulations for responding to FOIA requests. 40 C.F.R. section § 2.107.

As discussed below, each of the four factors that EPA uses to assess whether the requested information in fact is in the public interest and likely to contribute significantly to public understanding of the operations or activities of the government demonstrates that a waiver is proper here. And because the States are governmental, and not a commercial, entities, the second fee waiver requirement—that the request "is not primarily in the commercial interest of the requester"—is not applicable. 40 C.F.R. § 2.107(l)(1).

The Subject of the Request Concerns the Operations or Activities of the Government.

The requested records, which relate to oil and gas industry reporting pursuant to 40 C.F.R. Part 60 Subpart OOOOa, directly concern the “operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

Under Clean Air Act § 111(b), when the EPA administrator determines that a category of sources “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,” the Administrator “shall” include that category on a list of stationary sources. 42 U.S.C. § 7411(b)(1)(A). Pursuant to § 111(b), EPA listed crude oil and natural gas production as a source category that contributes significantly to air pollution that may reasonably be anticipated to endanger public health and welfare. *See* Priority List and Additions to the List of Categories of Stationary Sources, 44 Fed. Reg. 49,222 (Aug. 21, 1979).

Methane is a particularly powerful agent of climate change; pound-for-pound, methane warms the climate about thirty-four times more than carbon dioxide over a 100-year period, according to the Intergovernmental Panel on Climate Change, and on a twenty-year timeframe, has about eighty-six times the global warming potential of carbon dioxide. According to EPA, the oil and gas sector is the largest industrial emitter of methane in the U.S., accounting for a third of total U.S. methane emissions.¹ Oil and gas production, transmission, and distribution results in massive leakage of methane to the atmosphere.

Numerous scientific assessments, including, but not limited to, EPA’s 2009 greenhouse gas endangerment determination, the assessments of the International Panel on Climate Change, the U.S. Global Change Research Program and the National Academy of Sciences, and scientific studies undertaken by states across the nation, establish that anthropogenic greenhouse gas emissions, including methane, may reasonably be anticipated to endanger public health or welfare. The oil and natural gas source category causes or contributes significantly to such greenhouse gas air pollution. As well, available technology can effectively and efficiently reduce methane emissions from the oil and natural gas industry. As a result, in 2015, EPA promulgated a final New Source Performance Standard under Clean Air Act § 111(b) for methane emissions from new and modified oil and natural gas sources. *Oil and Natural Gas Sector Emission Standards for New, Reconstructed and Modified Sources*, 81 Fed. Reg. 35, 824 (June 3, 2016).

Nevertheless, on June 16, 2017, EPA proposed two rules that would collectively stay, for a period of two years and three months, the compliance requirements contained in the final rule titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified

¹ EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2015 (2017) (“2017 GHGI”), at ES-16, Table ES-2, *available at* https://www.epa.gov/sites/production/files/2017-02/documents/2017_complete_report.pdf

Sources,” published in the Federal Register on June 3, 2016 (the “2016 Rule”).² More recently, EPA issued notices of data availability (NODAs) discussing “the technological, resource, and economic challenges with implementing” certain compliance requirements in the 2016 Rule.³ The NODAs reference feedback from stakeholders that affected facilities are unable to implement certain requirements in the 2016 Rule and therefore a stay or “extended phase-in” of compliance requirements is necessary.

The documents sought by this FOIA request will assist the public’s understanding of methane emissions from the oil and gas sector, cost effective methods of controlling those emissions. The documents will also assist the public’s understanding of the volume of natural gas currently escaping to the atmosphere, where it cannot be put to productive use, and the economic cost of failure to control those emissions. Finally, the documents sought by this FOIA will provide the public’s understanding about EPA’s responses to methane emissions and the bases for those responses.

The Disclosure Is Very Likely to Contribute to an Understanding of Government Activities and Operations.

Americans are deeply concerned about the impacts of climate change, which are already being felt across the United States. A recent 2017 poll by the Yale Program on Climate Communication shows that Americans broadly support action on climate change—seven in ten Americans support regulating carbon dioxide from coal-fired power plants, and seventy-five percent support regulation of carbon dioxide more generally.⁴ The Yale polling shows that most Americans know that climate change is occurring now, and a majority agree it is already harming people in the United States.⁵

A poll conducted from March 30 through April 3, 2017, by Quinnipiac University found that two-thirds of Americans are “very concerned” or “somewhat concerned” that climate change will affect them or a family member personally.⁶ Three-quarters are “very” or “somewhat”

² *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements*, 82 Fed. Reg. 27,641 (June 16, 2017); *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements*, 82 Fed. Reg. 27,645 (June 16, 2017).

³ 82 Fed. Reg. 51,788 (Nov. 8, 2017).

⁴ Nadja Popovich, John Schwartz, Tatiana Schlossberg, *How Americans Think About Climate Change in Six Maps*, N.Y. TIMES (Mar. 21, 2017), <https://www.nytimes.com/interactive/2017/03/21/climate/how-americans-think-about-climate-change-in-six-maps.html>

⁵ *Id.*

⁶ Hannah Hess, *Voters object to cutting climate research—poll*, E&E NewsPM (Apr. 5, 2017), <http://www.eenews.net/eenewspm/2017/04/05/stories/1060052676>

concerned about climate change, and fifty-nine percent want government action to address the threat of climate change.⁷

Climate change is having a very real, significant, and adverse impact on American families and businesses. Just this year, after drought and unseasonably high temperatures set the stage, wildfires ravaged California, Kansas, Oklahoma, and Texas. Without reduction in global warming pollution like methane, the impacts of climate change will only worsen. *See generally, Our Changing Planet*, U.S. Global Change Research Program for FY 2017 at 2 (hereinafter, “USGCRP Report”) (climate-driven impacts include risks to human health; more frequent and intense storms that threaten food security, infrastructure, and livelihoods; sea level rise and coastal flooding; international stability; and U.S. national security).

The National Aeronautics and Space Administration (“NASA”) and the National Oceanic and Atmospheric Administration (“NOAA”) have confirmed that 2016 was the warmest year on record globally.⁸ NASA observed, “2016 is remarkably the third record year in a row in this series We don’t expect record years every year, but the ongoing long-term warming trend is clear.” *See also* USGCRP Report at 2 (internal citations omitted) (“The global environment is changing rapidly. . . . [G]lobally-averaged temperatures in 2015 shattered the previous record, which was set in 2014; and 2016 is on track to break the 2015 record.”). According to NASA, the Earth’s average temperature has risen about two degrees Fahrenheit since the late nineteenth century, due largely to increased carbon dioxide and other human-made emissions in the atmosphere. And most of that warming has occurred in our lifetimes, in the past thirty-five years. Indeed, sixteen of the seventeen warmest years on record have occurred since 2001.

The documents that the States seek through this request are based on private oil and gas sector data reported to the EPA regarding methane emissions and are not generally available in the public domain. The documents are critically important to the public’s understanding of the volume and sources of methane emissions from new, reconstructed, and modified oil and gas facilities’ standard production, processing and transmission activities. *See* 40 C.F.R. § 2.107(l)(2)(i). The documents will likely be highly informative because of its potential to shed significant light on the merits of the EPA’s standards for new, reconstructed, and modified oil and gas facilities, and also on cost-effective measures that EPA may opt to pursue to satisfy its Clean Air Act statutory obligation to protect the environment and human health by controlling methane emissions from existing oil and gas sector sources. *Id.*

Contribution to an Understanding of the Subject by the Public Is Likely to Result from the Disclosure.

The States routinely engage with the public and press, and serve as a source of information to promote public understanding of issues, while advocating in the public interest.

⁷ *Id.*

⁸ NASA, NOAA Data Show 2016 Warmest Year on Record Globally, NASA (Jan. 18, 2017), <https://www.nasa.gov/press-release/nasa-noaa-data-show-2016-warmest-year-on-record-globally>.

For example, California's Office of the Attorney General regularly issues press releases in connection with its work that are made available on the Attorney General's website, *see* <https://oag.ca.gov/media/news>, and representatives of the Office frequently speak on issues of public concern. California's Attorney General also posts regularly on issues of public concern to the Office's Twitter account, which has over 50,000 followers, *see* <https://twitter.com/AGBecerra>.

Moreover, the Offices of Attorney General from the States have specialized expertise in environmental regulation and they regularly engage in enforcement of state and federal environmental laws. These attorneys general intend to analyze the data released pursuant to this request and inform the public of any newsworthy information found in the documents requested. Thus, the States are particularly well suited to present information from the documents presented to the public in a manner that is accessible and understandable to non-experts. Accordingly, disclosure will contribute to the understanding of the subject of the request by a broad public audience. See 40 C.F.R. § 2.107(l)(2)(iii).

The Disclosure is Likely to Contribute "Significantly" to Public Understanding of Government Operations or Activities.

As set forth above, climate change, and controlling the pollution that is causing climate change, is a topic about which the public is deeply concerned. Information gathered from the requested documents will help the public to understand more about the sources of and potential options for controlling oil and gas sector methane pollution, and EPA's actions as they relate to regulation of those emissions. See 40 C.F.R. § 2.107(l)(2)(iv). While the public is very familiar with the contribution of carbon dioxide to climate change, it is less familiar with the role of methane in driving climate change, and, in particular, the contribution of methane emissions from the oil and gas sector to climate change. The public is also less familiar with the NODAs and their bases. Disclosure of the requested records will help the public to better understand the magnitude of existing oil and gas sector emissions, the options and costs of controlling those emissions, and the efficacy of significance of EPA's Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources. 81 Fed. Reg. 35,824 (June 3, 2016).

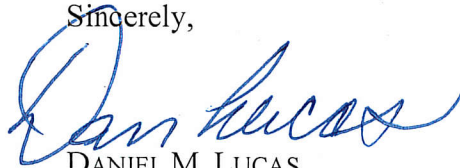
Please send a copy of the requested records to the attention of Daniel M. Lucas at the California Department of Justice, 300 S. Spring Street, Suite 1702, Los Angeles, California 90013. For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event that the State's request for a fee

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waiver is denied or if you have any questions about this request, please contact Daniel M. Lucas immediately by telephone at (213) 269-6345 or by email at Daniel.Lucas@doj.ca.gov. Thank you in advance for your attention to this matter.

Sincerely,



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